

Nota

Resolution 31/30, adopted by the Human Rights Council on 24 March 2016

Effects of terrorism on the enjoyment of all human rights

Contribution of Portugal

Terrorism has a negative impact on the enjoyment of all human rights, as recognized by the United Nations, in particular as regards the right to life and to security, deeply affecting the development and welfare of populations.

Portugal seeks to ensure and maintain a balance between the fight against terrorism and the respect for human rights. Portugal is a democratic State based in the rule of law as stated in Article 2 of the Constitution. The respect for human rights and fundamental freedoms is foreseen in a number of provisions of the Constitution of the Portuguese Republic (CRP), such as Article 7 (rules governing rights, freedoms and guarantees), Article 20 (access to law and effective judicial protection) or Article 25 (right to personal integrity) as well as Article 33 (safeguards in criminal proceedings) and Article 34 (inviolability of home and correspondence).

In spite of the fact that no specific measures or written good practices exist to ensure the respect for human rights and fundamental freedoms in countering terrorism, in the framework of the investigations of alleged terrorism or terrorist activities, the Portuguese Criminal Police must perform its duties according to the Constitution and to the rules provided for in the Code of Criminal Procedure.

The National Strategy for Combating Terrorism, adopted on 19 February 2015, takes the commitment to respect the European Convention on Human Rights and Fundamental Freedoms of the Council of Europe, the original right of the European Union, the European Charter of Fundamental Rights, the constitutional principles of the Portuguese State, and is inspired by the UN resolutions and the policy against terrorism the European Union. In this sense, this National

Strategy is developed in strict compliance with the principles of necessity, appropriateness, proportionality and effectiveness of civil liberties, the rule of law and freedom of scrutiny.

The offence of terrorism as well as the offences of international terrorism and terrorism financing are foreseen in Law no 52/2003, of 22 August. The provisions of the Code of Criminal Code and the Code of Criminal Procedure are applicable in a subsidiary manner, meaning that the principle of the rule of law and the principle of legality in the field of criminal law (as referred to in Article 1 of the Criminal Code) are also observed.

The abovementioned Law is permanent in nature and no sunset clauses are foreseen within its provisions. Regular internal mechanisms for the review are applicable. For instance, Law no 52/2003 was amended in 2007 and 2008 to update some provisions and to add the new autonomous offence of terrorism financing.

More recently, Law no. 52/2003 was amended and updated in 2015, in order to include new offences, as is the case of (i) the recruitment or to be recruited for the commission of terrorism and international terrorism acts, (ii) the providing of training or instructing to other persons on the manufacture or use of explosives, firearms or other weapons and noxious or hazardous substances or on other specific methods or techniques for the commission of terrorism acts, (iii) the rewarding or praising another person, group or association for the commission of terrorism acts, (iv) the travelling or attempt to travelling to a different territory of their State of residence or nationality, in order to provide training, logistical support or instruction to other person for the commission of terrorism acts and (v) the travelling or attempt to travel to a different territory of their State of residence or nationality, in order to joining a terrorist organization or for the commission of terrorism acts as well as (vi) the organization, financing or facilitating mentioned travel or attempt to travel. The use of internet and other means of information and communication constitute aggravating circumstances of the commission of these crimes.

In the framework of criminal investigations, including terrorism and other related offences, special investigative techniques could be used, for instance undercover or covert operations, governed by Law no. 101/2001, of 25 August.

As is clear from what was said, Portuguese authorities took and are taking measures to implement the principles set forth in the Constitution of the Portuguese Republic - Articles 13, 15 and 26 – and in Law no 134/99 prohibiting discrimination in the exercising of rights based in the race, nationality or ethnical origin, that could help to prevent the radicalization and recruitment to terrorism through discrimination. It should also mentioned that the new “Statute of Victims” approved by Law no 130/2015, of 4 September, which transposed into domestic legislation EU Directive 2012/29/EU, of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime. This Statute is also applicable to the victims of the crimes of terrorism and terrorism related crimes.